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It has been urged that some extension of the old doctrine of "continuous voyage" is necessary, in view of the unusual conditions of modern warfare.²⁶ To what extent belligerent measures in the present conflict will be recognized as precedents²⁷ after its termination cannot be predicted; but, if the attitude of our own Government during our period of neutrality affords any indication,²⁸ there is apt to be a reaction in favor of the enlargement of neutral rights and the curtailment of belligerent privileges. At any rate, the acceptance of the doctrines advanced in the principal case will require a decided modification of the existing rules of international law.

IS INTERESSE TERMINI NECESSARY?—The expression *interesse termini* is applied to denote the interest which a lessee has before he enters into possession of the demised premises. The interest is executory in character, and covers two classes of cases—first, where a lease *in praesenti* is executed, *i. e.*, where the lessee has an immediate right to possession but does not enter; second, where a lease *in futuro* is made, *i. e.*, the term is to commence at some future date and the right to possession is postponed until such time.¹ To understand the origin and nature of this interest it is necessary to refer briefly to the status of a leasehold estate at early common law. Originally the rights of a lessee were all rights *in personam* against his lessor. If the lessor failed to deliver possession of the premises to him, he could not bring a real action; his sole remedy was an action for breach of covenant.² Since the right to enter was purely contractual it would seem to follow, under the doctrine that choses in action were non-assignable, that if the lessee died before entry, such right would terminate with his death. It was perhaps to meet this situation that *interesse termini* was created—an interest which, in so far as it was transferable,³ by deed or will as well as by interstate succession,⁴ had some of the features of a right *in rem*,

²⁶See British note of Feb. 10, 1915, 9 Am. Jour. Int. Law, Special Supp. 72 *et seq.*; *cf.* British note of July 24, 1915, *ibid.* 158 *et seq.*, and memorandum of July 7, 1916, 10 Am. Jour. Int. Law, Special Supp. 7.

²⁷Great Britain, while admitting that some of her measures overstep the bounds of international law, has defended them upon the ground of retaliation. *Cf.* Note of Feb. 19, 1915, 9 Am. Jour. Int. Law, Special Supp. 176 *et seq.*

²⁸For the diplomatic correspondence containing our defence of neutral rights, see 9 and 10 Am. Jour. Int. Law, Special Supps.; also Moore, Principles of American Diplomacy, Chap. II, especially at pp. 67-101. Our Government has consistently urged the exemption of all private property at sea from capture. See Naval War College, Int. Law Topics, 1905, 9-20.

¹Comyns, Dig. Estates by Grant (G14). *Edge v. Strafford* (1831) 1 C. & J. 391.

²Bracton, Book IV, c. 34, fol. 220; see *Wilcox v. Bostick* (1900) 57 S. C. 151, 35 S. E. 496.

³*Wheeler v. Thorogood* (1588) Cro. Eliz. 127. "But the lessee before entry hath an interest, *interesse termini*, grantable to another." Co. Litt. 46b. See *Whitney v. Allaire* (1848) 1 N. Y. 305.

⁴"And so if the lessee dieth before he entered, yet his executors or administrators may enter." Co. Litt. 46b.

but which nevertheless was not an estate or right in land but simply a right to the possession of land.⁵

With the evolution of a leasehold estate from a mere right *in personam* into a right *in rem*,⁶ the need for an interest such as *interesse termini* is no longer apparent. Where a lease is made to commence *in futuro*, at the expiration of a prior estate, the case is similar to that where a tenant in fee simple conveys to A for life with remainder to B in fee. In the latter case B has a vested estate with all the remedies necessary to its protection. Despite the rigid requirement of livery of seisin at common law, B would not have to enter into possession in order to perfect his right. He could assign his interest, or upon his death it would descend to his heirs. At the termination of the life estate the assignee could enter upon the land. To have clothed the remainderman with an intervening interest⁷ would not, therefore, have served any useful purpose; for, subject to the rights of the tenant in possession, the remainderman already had all the rights which the law then accorded to the owner of a well recognized proprietary interest. It may be argued that at common law, in the case of a conveyance to A for life, or in fee, A actually had to enter on the property before title would pass to him and that the same would be true in the case of a lease *in praesenti*. And such was the law.⁸ But after the Statute of Uses,⁹ physical entry became unnecessary. As a result of the statute, title could be conveyed without livery of seisin or transmutation of possession. The operation of the statute was not limited to estates in freehold, but extended as well to a lease by way of bargain and sale, and the lessee was in of his term without having entered upon the premises.¹⁰ As a result, the lease and release assume great importance as an effective means of circumventing the Statute of Inrolments¹¹ and soon became the almost universal method of conveyancing.

After the Statute of Uses¹² and the creation of the remedy of ejectment, a leasehold estate possessed, for all practical purposes, the attributes of a freehold,¹³ but this fact has never given judicial recognition. In the recent case of *Mann, Crossman, & Paulin, Ltd. v. Registrar of the Land Registry* (1917) 117 L. T. R. (N. S.) 705, the novel question was raised as to whether a reversionary lease limited to begin after the period allowed by the Rule against Perpetuities was in violation of the rule. The court held that the Rule was not violated; but instead of recognizing *interesse termini* as an archaic survival which has no place in our present jurisprudence seemingly based its judgment on the ground that *interesse termini* was itself a vested property right. If the

⁵*Saffyn v. Adams* (1602) Cro. Jac. 60; see *Llangattock v. Watney, Combe, Reid & Co., Ltd.* [1910] 1 K. B. 236, 246.

⁶3 Bl. Comm. *200 *et seq.*; 2 Pollock & Mait., Hist. Eng. Law 106 *et seq.*

⁷The phrase *interesse termini* is not used with regard to a freehold lease. *Ecclesiastical Comm'rs. v. Tremer* [1893] 1 Ch. 166.

⁸*Miller v. Green* (1831) 8 Bing. 92; Williams, Real Property (22nd ed.) 201.

⁹27 Hen. VIII, c. 10.

¹⁰*Lutwich v. Mitton* (1620) Cro. Jac. 604.

¹¹27 Hen. VIII, c. 16.

¹²It must be noted, however, that the Statute of Uses applied only to a lease by way of bargain and sale.

¹³The introduction of the fiction of entry in the action of ejectment was a further step in this direction. See 3 Bl. Comm. *203.

court regarded *interesse termini* as an estate then its reasoning seems unsound; for although courts and early writers have declared *interesse termini* to be assignable they have expressly repudiated the notion that it was an estate. It was considered only as a right to an estate.¹⁴ Furthermore, if it is a property right but something less than an estate the answer given by the court does not solve the question as to whether or not the future limitation of the term is too remote. Following the analogous reasoning suggested in cases of an option for the purchase of land,¹⁵ or a right of entry upon condition broken,¹⁶ it would appear that the lease in question did violate the Rule.¹⁷

But to limit in this manner the creation of leasehold estates would be to lose sight of the present status of such property in our law, together with its historical background, and would mean the application of principles better adapted to a medieval system of land tenure.¹⁸ It is sub-

¹⁴*Saffyn v. Adams*, *supra*; see *Wood v. Hubbell* (1853) 10 N. Y. 479; *Copeland v. Stephens* (1818) 1 B. & Ald. *593, *605; 1 Platt, Leases 22. The doctrine of merger did not apply; *Doe d. Rawlings v. Walker* (1826) 5 B. & C. 111; nor was the interest subject to a judgment lien. *Crane v. O'Connor* (N. Y. 1844) 4 Edw. Ch. *409.

¹⁵*London & Southwestern Ry. v. Gomm* (1882) 20 Ch. D. 562. The Rule against Perpetuities does not apply to renewal of leases. *Hare v. Burges* (1857) 4 K. & J. 45, but it does apply to an option contained in a lease for the purchase of the land in fee simple. *Woodall v. Clifton* [1905] 2 Ch. 257.

¹⁶*In re The Trustees of Hollis' Hospital & Hague's Contract* (1899) 2 Ch. 540; see *Dunn v. Flood* (1883) 25 Ch. D. 629.

¹⁷*In Redington v. Browne* (1893) 32 Ir. L. R. 347, a lease like the one in the principal case was held not to violate the Rule. The validity of a similar lease was assumed in *Smith v. Day* (1837) 2 M. & W. *684. Text writers have generally considered a reversionary lease to be within the rule. See Lewis, *Law of Perpetuity* *614; Fearn, *Contingent Remainders* (10th ed.) 611; 1 Key & Elphinstone, *Precedents in Conveyancing* (10th ed.) 1073, n. (b); but see 1 Jarman, *Wills* (6th ed.) 307.

A limitation though transmissible may nevertheless not be vested. *Hawkins, Wills* (2nd ed.) c. 18. Thus in the case of an executory devise of a fee after a prior gift in fee, the interest of the second donee is descendible and assignable; but should it be dependent upon a contingency which may not occur within the prescribed period permitted by the Rule against Perpetuities it is void in its inception. A gift of a chattel may be made at the present time but to take effect twenty-five years hence, in which case the grantee gets no vested interest, and the Rule is again violated. The lease in question may fall into one of these two groups. Since, however, the Rule against Perpetuities is based on public policy such technical reasoning ought not to be applied so as to defeat every kind of limitation regardless of its consequence. If a lease for a term of fifty years or a lease for twenty-five years with a covenant to renew for another like period is good, a similar policy ought to govern reversionary leases.

The view has recently been expressed that the New York Rule against Perpetuities is aimed not only at the suspension of the power of alienation but also at remoteness of vesting; see *Matter of Wilcox* (1909) 194 N. Y. 288, 87 N. E. 497; but under either Rule a lease *in futuro* would be valid in that state according to the view herein expressed.

¹⁸A concurrent lease may be given, which in effect amounts to a lease of the reversion itself and entitles the second lessee to the rents and profits during the period of his term. 2 Platt, *op. cit.* 57; *Benjamin v. Northwestern Fire & Marine Ins. Co.* (1912) 119 Minn. 27, 137 N. W. 183; *Pendergast v. Young* (1850) 21 N. H. 234. The lessee in such a case is in the position of an assignee of the reversion, and has a vested right *in praesenti*. But he may not restrain since he has no common law reversion. *Cf. Lewis v. Baker* [1905] 1 Ch. 46.

mitted, however, that the decision might have been based upon another line of reasoning. It may be said that upon the execution of the lease, the lessee received an immediate vested right in the term, with all its incidents, but that the time of enjoyment was postponed; and in this way various problems that may arise are solved by entirely eliminating the intervening interest.¹⁹ Such an opinion might have been a bit of judicial legislation, but it is in a case of this sort that "judges do and must legislate". The development by the courts of the rights of a lessee in possession, a development largely unaided by statute,²⁰ would have justified this final step. And indeed the practical effect of the court's decision is much as though this step had actually been taken. The view suggested is also consistent with the growing commercial importance of a term for years, and is in harmony with the trend of statutory legislation which has been toward giving the tenant out of possession greater rights against third parties,²¹ at the time when his right to enter accrues. But even in the absence of such statutes or where similar statutes have been narrowly construed²² the lessee may nevertheless be given adequate protection on common law principles.²³

ADJUSTMENT OF RIGHTS UNDER WORKMEN'S COMPENSATION WHERE INJURY IS CAUSED BY THIRD PARTY.—Certain employees injured in the course of their employment are entitled to recovery under workmen's compensation acts. Where the injury is caused by the wrong

¹⁹The result of this would be that a limitation of a term at the end of a prior term or estate would be identical to a similar limitation of a freehold upon a prior gift or grant, *viz.*, a vested remainder.

²⁰3 Bl. Comm. *200 *et seq.* Fox v. Corbitt (1917) 137 Tenn. 466, 194 N. W. 88 (tenant in possession permitted to enjoin a nuisance).

²¹See Cooper v. Gordon (N. D. 1917) 164 N. W. 21; Burton v. Rohebeck (1883) 30 Minn. 393, 15 N. W. 678; Alexander v. Carew (1866) 95 Mass. 70; Webb v. Heyman (1891) 40 Ill. App. 335.

²²See Blatchford v. Cole (1858) 5 C. B. (N. S.) *514; Eells v. Morse (1913) 208 N. Y. 103, 101 N. E. 803; Chylowski v. Steinberg (1916) 193 Mich. 547, 160 N. W. 421; Long v. Noe (1892) 49 Mo. App. 19; McCauley v. Hazlewood (C. C. 1894) 59 Fed. 877.

²³See Huffman v. Starks (1869) 31 Ind. 474; Mattingly's Ex'r. v. Brents (1913) 155 Ky. 570, 159 S. W. 1157; Some courts have permitted the tenant out of possession to maintain an action of ejectment against a third party who is wrongfully in possession. See Johnston v. Corson Gold Mining Co. (C. C. 1907) 157 Fed. 145; Gardner v. Keteltas (N. Y. 1842) 3 Hill 330; U. S. Realty & Imp. Co. v. Roth (1908) 193 N. Y. 570, 86 N. E. 544. But others have held that *interesse termini* does not qualify the owner to bring ejectment. See Petroleum Co. v. Coal, Coke & Mfg. Co. (1890) 89 Tenn. 381, 18 S. W. 65; Sennett v. Bucher (Pa. 1832) 3 Pen. & W. 392; 1 Platt, *op. cit.* 23. In Gillard v. Cheshire Lines Committee (1884) 32 W. R. 943, the court recognized that *interesse termini* was a right *in rem* by permitting a lessee who had not yet entered upon the land to recover damages against the third party for injury to the demised premises. A lessee before entry ought not of course to be able to maintain trespass which depends upon actual possession, Harrison v. Blackburn (1864) 17 C. B. (N. S.) *678, nor an action for breach of a covenant for quiet enjoyment which is based on disturbance of possession. Wallis v. Hands [1893] 2 Ch. 75. He may, however, maintain an action in covenant against the lessor for not putting him in possession. Coe v. Clay (1829) 5 Bing. 440; but see Mechanics' & Traders' Fire Ins. Co. v. Scott (N. Y. 1859) 2 Hilt. 550.